

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED *cl*

2019 JUL 29 P 1:57

KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA, ex rel.,

G. ISAAC SPONAUGLE, III,
West Virginia citizen and taxpayer,

Petitioner,

v.

Civil Action Number: 18-P-442
Honorable Charles E. King, Judge

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,

Respondent.

**RESPONDENT'S MOTION FOR ENTRY OF AN ORDER
CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW**

James Conley Justice, II, Governor of the State of West Virginia (hereinafter "Respondent"), by counsel, respectfully moves this Court to enter an order setting forth findings of fact and conclusions of law in support of its decision to deny Respondent's motion to dismiss. This motion is being made because Respondent intends to seek a writ of prohibition to challenge the Court's ruling. In support of this motion, Respondent states as follows:

1. Petitioner G. Isaac Sponaugle, III (hereinafter "Petitioner") filed the instant Petition for Writ of Mandamus against Respondent, in his official capacity as Governor of the State of West Virginia, asking this Court to order Respondent to "reside at the seat of government during his term of office, and keep there the public records, books and papers pertaining to his respective office[.]"

2. On February 19, 2019, Respondent filed a motion to dismiss the Petition (together with a supporting memorandum of law), arguing that Petitioner is not entitled to a writ of mandamus as a matter of law. More specifically, Respondent argued that (1) mandamus cannot be employed

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to prescribe the manner in which a government official shall act, and the duty to "reside" at the seat of government is so nebulous and laden with discretion that any writ granted in this case would necessarily involve prescribing the manner in which the Governor shall act, thereby improperly encroaching on his autonomy and violating the political question doctrine and corresponding separation of powers principles; (2) mandamus is not available to compel a general course of conduct to be performed over a long period of time (as opposed to a discrete act), especially where, as here, it would require this Court to monitor and supervise the conduct of the State's Chief Executive on an ongoing basis; and (3) mandamus is unavailable where, as here, other adequate remedies exist.

3. By Order dated July 17, 2019, this Court denied Respondent's motion to dismiss. In doing so, the Court implicitly ruled that mandamus is at least theoretically available to compel Respondent to "reside" in Charleston. However, the Court's Order did not contain findings of fact and conclusions of law that support and form the basis of the Court's decision.

4. After receiving a copy of this Court's July 17, 2019 Order, Respondent filed a motion to certify the following questions to the West Virginia Supreme Court of Appeals:

- I. As a matter of law, is mandamus available to compel the Governor of the State of West Virginia to "reside" at the seat of government?
- II. Is the duty to "reside" at the seat of government sufficiently clear, defined, and free from elements of discretion that it can be enforced through mandamus without improperly prescribing the manner in which the Governor shall act?
- III. Does prescribing the amount of time the Governor must spend in Charleston, and/or restraining his discretion to determine where he will be present on any given day under any given set of circumstances, involve non-justiciable issues and run afoul of the political question doctrine and corresponding separation of powers principles?
- IV. Is mandamus available to compel a general course of conduct to be performed over a long period of time, as opposed to a discrete act, especially where it would require a court to monitor and supervise the conduct of the State's

Chief Executive on an ongoing basis?

- V. If mandamus is available to compel the Governor to “reside” at the seat of government, what is the definition of “reside” in the context of W. Va. Const. art. VII, § 1 and W. Va. Code § 6-5-4, and what are the specific parameters of the character and amount of time that the Governor must spend at the seat of government before he is deemed to be “residing” there?

5. If this Court denies Respondent’s motion to certify questions, Respondent intends to file a petition for writ of prohibition arguing that this Court lacks jurisdiction and/or the legitimate power to entertain a mandamus action to compel the Governor of the State of West Virginia to “reside” at the seat of government. *See* Syl. Pt. 1, State ex rel. Allstate Ins. Co. v. Gaughan, 508 S.E.2d 75 (W. Va. 1998)(“A writ of prohibition will lie where the trial court does not have jurisdiction or, having jurisdiction, exceeds its legitimate powers.”).¹

6. The West Virginia Supreme Court of Appeals has held that although a circuit court is not required to routinely set out detailed findings in interlocutory orders, a circuit court *is* required to set out detailed findings when a party informs the court that he or she intends to challenge the court’s ruling by filing a petition with the Supreme Court of Appeals for an extraordinary writ. *See State ex rel. Vanderra Res., LLC v. Hummel*, 829 S.E.2d 35, 37 (W. Va. 2019). The purpose of this requirement is to provide the Supreme Court of Appeals “with a clear understanding of the lower court’s decision,” and to prompt the circuit court “to fully and conscientiously consider the basis for [the] decision.” Gaughan, 508 S.E.2d at 84–85.

¹ Truly, this case presents a non-justiciable question. Whether the State Constitution requires the Governor to reside in the capital is not an issue in this case. Petitioner seeks an order *commanding* Respondent to reside at the capital, which would require this Court to determine and dictate the manner in which the Governor is to fulfill that requirement. The absence of any specification in the Constitution or in a law duly enacted by the legislature renders the manner of fulfilling that requirement being subject only to the sound discretion of the Governor, which in turns removes it as an issue subject to determination by a court. Any attempt to dictate specific requirements as to the character and amount of time the Governor must spend in Charleston would be a judicial after-the-fact imposition of limitations on the manner in which the Governor may perform the duties of his office.

7. Accordingly, the West Virginia Supreme Court of Appeals has mandated that parties and circuit courts adhere to the following procedures:

A party seeking to petition this Court for an extraordinary writ based upon a non-appealable interlocutory decision of a trial court, must request the trial court set out in an order findings of fact and conclusions of law that support and form the basis of its decision. In making the request to the trial court, counsel must inform the trial court specifically that the request is being made because counsel intends to seek an extraordinary writ to challenge the court's ruling. *When such a request is made, trial courts are obligated to enter an order containing findings of fact and conclusions of law.* Absent a request by the complaining party, a trial court is under no duty to set out findings of fact and conclusions of law in non-appealable interlocutory orders.

Hummel, 829 S.E.2d at 37 (*quoting* Syl. Pt. 6, Gaughan, 508 S.E.2d 75)(emphasis added).

WHEREFORE, Respondent respectfully requests that this Court set out in an order findings of fact and conclusions of law that support and form the basis of its decision to deny Respondent's motion to dismiss.

Respectfully submitted,

JAMES CONLEY JUSTICE, II,
Governor of the State of West Virginia,

By Counsel,



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CERTIFICATE OF SERVICE

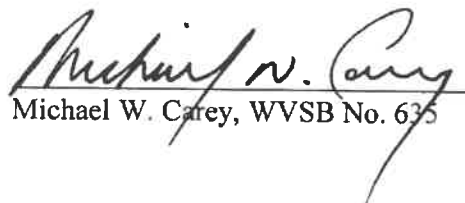
I, Michael W. Carey, do hereby certify that on the 29th day of July, 2019, I have served the foregoing **"Respondent's Motion for Entry of an Order Containing Findings of Fact and Conclusions of Law,"** upon the following, via email and United States Mail, postage pre-paid, addressed as follows:

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(Pro Hac Vice Admission Pending)


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